No. 13155

United States
Court of Appeals
For the Ninth Circuit

R. E. OLSEN, et al.,

Appellants,

vs.

POTLATCH FORESTS, INC., a Corporation; JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY; INTERNATIONAL WOODWORKERS OF AMERICA, Affiliated With the Congress of Industrial Organizations, LOCAL No. 10-358, of the International Woodworkers of America, at Pierce, Idaho, et al.,

Appellees.

Brief of Appellants

Appeal from the United States District Court, for the District of Idaho, Northern Division

WILLIAM S. HAWKINS,
E. L. MILLER,
Coeur d'Alene, Idaho,
Attorneys for Appellants.

No. 13155

United States
Court of Appeals
For the Ninth Circuit

R. E. OLSEN, et al.,

Appellants,

vs.

POTLATCH FORESTS, INC., a Corporation; JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY; INTERNATIONAL WOODWORKERS OF AMERICA, Affiliated With the Congress of Industrial Organizations, LOCAL No. 10-358, of the International Woodworkers of America, at Pierce, Idaho, et al.,

Appellees.

Brief of Appellants

Appeal from the United States District Court, for the District of Idaho, Northern Division

WILLIAM S. HAWKINS,
E. L. MILLER,
Coeur d'Alene, Idaho,
Attorneys for Appellants.

INDEX

STATUTES AND REFERENCES

No. 13155

United States
Court of Appeals
For the Ninth Circuit

R. E. OLSEN, et al.,

Appellants,

vs.

POTLATCH FORESTS, INC., a Corporation; JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY; INTERNATIONAL WOODWORKERS OF AMERICA, Affiliated With the Congress of Industrial Organizations, LOCAL No. 10-358, of the International Woodworkers of America, at Pierce, Idaho, et al.,

Appellees.

STATEMENT OF PLEADINGS AND FACTS DISCLOSING BASIS FOR JURISDICTION

This action was commenced by appellees, Potlatch Forests, Inc. by the filing of a complaint in and the issuance of a summons from the District Court of the United States, for the Northern Division of Idaho.

Appellee, Potlatch Forests, Inc. is a corporation organized and existing under and by virtue of the laws of the State of Maine (P. 5) and is engaged in interstate commerce within the meaning of the "Labor Management Relation's Act, 1947." That the contract

and issues involved in this proceeding affect interstate commerce within the meaning of that act.

Defendant, International Woodworkers of America, affiliated with C.I.O. is an international labor organization and has affiliated with it the defendants Locals No. 10-358, 10-361, 10-119, and 10-364 of the said I.W.A. (P. 5 & 6).

The defendant, appellee, John Hancock Mutual Life Insurance Company is a corporation organized and existing under the laws of the State of Massachusetts (P. 6).

The individual appellants named in the Notice of Appeal are all residents and citizens of the State of Idaho. (P. 6 & 7).

The statutory provisions which sustain the jurisdiction of the District Court are:

28 U. S. C. A. 1333
29 U. S. C. A. 185

The statutory provision which sustains the jurisdiction of the United States Court of Appeals is:

28 U. S. C. A. 1291

STATEMENT OF THE CASE

This action was instituted by Potlatch Forests, Inc. seeking a declaratory judgment finding that a contract entered into between it and the I.W.A. and its locals be declared valid, enforceable and unaffected by any law of the State of Idaho and of the United States.

The contract involved was entered into on July 14, 1950, between Potlatch Forests, Inc. and the International Woodworkers of America, affiliated with C.I.O. being the collective bargaining agency under the Labor Management Relations Act of 1947 for all maintenance and production employees of the Potlatch Forests, Inc. The appellants are among those employees, but a majority of them are not members of the unions or locals herein referred to (P. 23).

That the portion of said bargaining agreement herein involved is Article XVIII entitled "Company Financed Health and Welfare" and is set forth verbatim at pages 8, 9, and 10 of the Transcript of Record and authorizes the Potlatch Forests, Inc. to deduct from the wages of all of its maintenance and production employees 7½c per hour or 60c per day and pay that sum to the John Hancock Mutual Life Insurance Company for the purpose of "financing and paying for an employee benefit fund." (P. 8).

The contract was entered into between the Potlatch Forests, Inc. and I.W.A. acting through its committee.

No authorizations for such deductions have been signed by any employee. (P. 35-36).

These appellants, a majority of whom are non-members of the I.W.A. requested on September 6, 1950 that "nothing more be deducted from our pay checks in favor of the Health and Welfare Fund; and that such sums that have already been deducted be returned." (P. 20).

The validity of such contract is thus challenged and it is by the appellants contended that individual authorizations from each employee are required.

It is further contended that the 7½c per hour increase allowed to the employees and taken from them by the employer to pay for said Health and Welfare program constitutes a wage increase and cannot, without the signed authorization of the employee, be so taken and applied.

SPECIFICATION OF ERRORS

I.

The court erred in adjudging that the appellee unions had the right and authority to enter into the contractual provisions of Article XVIII of the Bargaining Agreement for the purposes therein set forth.

II.

The court erred in adjudging that the 7½c per hour was not a wage increase, for an employee to draw if he did not desire the insurance program.

III.

The court erred in adjudging that said 7½c per hour could be withheld from the employee and by the company paid to John Hancock Insurance Company designated by the Union without the signed authorization of the employee.

IV.

The court erred in adjudging that these individual appellants are not entitled to have returned to them deductions already made.

V.

The court erred in adjudging that said agreement does not violate the provisions of 29 U. S. C. A. 186.

VI.

The court erred in adjudging that the Union, through its bargaining committee, had authority to enter into said agreement to buy insurance, to be financed out of wages, and that to permit the same does not violate any statutory or constitutional right of the employee appellants.

SUMMARY

It is the contention of Appellant employees that the Respondent employer and unions cannot circumvent the plain terms and provisions of 29 U. S. C. A. 186, nor its intent, by granting a wage increase of 7½c per hour and then, without signed authorizations, in a compulsory manner deduct those earnings for health and welfare purposes.

The majority of Appellants are non-members of the unions involved. Their wage rates were increased 7½c per hour. Those wages vest in the employee and are then withheld from his paycheck without his signed authorization in order to pay for a "company financed" health and welfare program.

It is not contended that the Company employer cannot negotiate with the Union for the purpose of providing out of company funds, a health and welfare program. But it is contended that the same cannot, without his signed authorization, be financed by wage deductions in violation of the "Labor Management Relations Act, 1947.

ARGUMENT

The "Labor Management Relations Act, 1947" (29 U. S. C. A. 141 et seq.) expressly prohibits the doing of that which has been done in this case.

> "The provisions of the act dealing with union welfare funds are inadequate in many respects, and the whole subject requires further study, with probably a much more fundamental regulation. Section 302 (29 U. S. C. A. 186) was written larely to prevent the payment into welfare funds of moneys earned by employees, calling for compulsory deductions, the proceeds often completely at the disposition of labor unions. To a certain extent, the law has resulted in a much more impartial supervision and audit of these funds and has protected the equal rights of the employees entitled to participate."
>
> Vol. 25 L. R. R. M. 41
> Majority Report of Joint
> Congressional Committee on
> Taft Act. December 31, 1948

In the light of the foregoing report, the contract in the instant case is violative of the act as well as the intent of Congress.

From the material available, no similar case has been found. That is, where wages are increased and then taken for health and welfare purposes.

The procedure normally followed appears to be such as that as is contained in the contract between Ford Motor Company and the Union (U.A.W.-CIO).

24 L. R. R. M. 3

"RETIREMENT PLAN

> "Sec. 1. The Retirement Plan shall be non-contributory, financed completely by the Company.
>
> "Sec. 2. For the duration of the pension agreement beginning March 1, 1950, the Company agrees to pay into a pension fund 8¾ cents for every hour for which an hourly rated employee covered by the contract receives compensation, for the purpose of providing the benefits set forth herein. Since the Company assumes the responsibility to make contributions from time to time to the pension fund in an amount sufficient, based upon estimates made by a duly qualified actuary, to provide the monthly benefits specified in Section 5, taking into consideration as therein provided primary (old age) insurance benefits under the Federal Social Security Act (as now in effect or as hereafter amended), it may vary these payments accordingly. Past service benefits shall be funded in such manner as the Company in its sole discretion shall determine."

That is truly a "company financed" program. The instant case is an "employee financed" program in spite of the cagey language employed. To adopt and accept

this form of "wage increase" is to open the door to abusive negotiations and contracts.

The funds which have been made available to finance this program are *wages* and not company finances. The contract is an effort to circumvent 29 U. S. C. A. 186.

Wages, once granted, cannot be taken from the employee, except under the provisions of 29 U. S. C. A. 186. No wage benefits or allowances are made under the contract involved and then deducted except for health and welfare purposes other than as authorized by 29 U. S. C. A. 186. Collective bargaining cannot be violative of statutory restriction. The increase here is wages deducted from the paycheck of the employee and paid at the direction of the union and employer to an insurance company.

If such is tolerated, what is to prevent the union, through its bargaining committee, to contract with the employer for further deductions of wages granted or to be granted for the "benefit of all of the employees"? A wage increase is never a fiction. It is a reality. Health and welfare programs are desirable, but not to be financed as herein contracted.

To recognize and condone such a contract will open the door to other contracts in other fields to be financed by wages of employees in contravention of 29 U. S. C. A. 186.

It is respectfully submitted that the judgment of the lower court should be reversed and that that portion of the contract governing Health and Welfare be declared to be in violation of 29 U. S. C. A. 186 without the signed authorization of the employees.

Respectfully submitted,

WILLIAM S. HAWKINS,

E. L. MILLER,

Attorneys for Appellants.